

REMARKS

Claims 1 and 5 stand objected to for lacking antecedent basis. Claims 1 and 5 are amended to add antecedent basis, and therefore, the objections are rendered moot and should be withdrawn.

Claims 1, 4-6 and 8 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 24 of U.S. Patent no. 6,277,671. However, the Examiner has failed to meet all the requirements for a proper obviousness-type double patenting rejection, and therefore, the rejection is improper and should be withdrawn. The Examiner is respectfully reminded that the MPEP specifically states, "[a]ny obviousness-type double patenting rejection should make clear... (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue would have been an obvious variation of the invention defined in a claim in the patent." MPEP §804 II. B. 1 (emphasis added). That is, the Examiner has to give reasons why a skilled person in the art would conclude that distinctive limitations between claims were obvious variations. The Examiner has not provided any reasons, and therefore, this obviousness-type double patenting rejection is improper and should be withdrawn.

For example, independent claim 1 of the current application recites: "providing each actuator of the pair with release valves to equilibrate a back-pressure to ambient during lifting of the support." Independent claim 8 of the current application recites: "providing each of the pneumatic actuators with release valves to equilibrate a back-pressure to ambient during lifting of the support." The Examiner correctly states these limitations are not recited by claim 24 of Patent no. 6,277,671, but refers to the following limitation of claim 24 of Patent no. 6,277,671 as being an obvious variant of release valves:

“maintaining a substantially equal gas pressure comprises equilibrating gas in the outlet lines with ambient pressure during the lifting”, with the Examiner particularly referring to “outlet lines.” (pgs. 3-4 of paper no. 01062006). The Examiner states it would be obvious to one skilled in the art to interpret “outlet lines” of claim 24 (Patent no. 6,277,671) as release valves (recited in independent claims 1 and 8 of the current application). However, the Examiner has simply provided his own conclusion **without stating any reason why it would be an obvious variant accordingly to one skilled in the art as is required by the above authority.** Outlet lines are not obvious variants of release valves and one skilled in the art would understand that “outlet lines” as defined in the limitation of claim 24 can be configured in numerous embodiments that do not include release valves as recited by independent claims 1 and 8 of the current application.

Accordingly, the Examiner has failed to provide **any reason** why a person of ordinary skill in the art would conclude that the claims at issue would have been an obvious variation. Since the Examiner has failed to meet all the requirements for a proper obviousness-type double patenting rejection pursuant to the above authority, the obviousness-type double patenting rejection is improper and should be withdrawn.

No other rejections are presented against claims 4-6, and therefore, claims 4-6 are allowable.

Claims 1-3 and 7-10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Applicants Admitted Prior Art (AAPA), in view of Lodewegen et al. (U.S. Patent No. 5,765,337). Claim 7 stands rejected under 35 U.S.C. §103(a) as being unpatentable over AAPA and Lodewegen (U. S. Patent NO. 5,765,337) as applied to claim 1 above, and further in view of Abrahamson et al. (U.S. Patent No. 5,984,293).

The Examiner addresses respective independent claims 1 and 8 with the same rationale and same rejection based on AAPA and Lodewegen. The Examiner is respectfully reminded that all elements must be shown to be suggested by the prior art when making a rejection based upon obviousness under 35 U.S.C. §103(a). *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1987).

Claim 1 recites providing each actuator of the pair with *release valves to equilibrate a back-pressure to ambient during lifting* of the support. Claim 8 recites providing each of the pneumatic actuators with *release valves to equilibrate a back-pressure to ambient during lifting* of the support. The Examiner correctly states AAPA fails to teach this limitation and relies on Lodewegen to allegedly teach the limitation (pg. 7 of paper no. 01062006) pointing to column 6 and lines 23-53 of Lodewegen. However, Lodewegen teaches a “valve releases air pressure periodically to move the primary stacking member **downward**” (col. 6, Ins. 35-38) (emphasis added). That is, Lodewegen teaches to release air only to move the stacking member downward, not to **lift** as positively recited by claims 1 and 8. Accordingly, the art relied upon by the Examiner fails to teach or suggest the positively recited limitations of claims 1 and 8, and therefore, the claims are allowable.

Moreover, claim 1 recites vertically displacing the support off the pins using a **pair** **of pneumatic actuators** such that individual actuators of the pair lift respective opposing ends of the support substantially simultaneously and in unison. Claim 8 recites vertically displacing the support off the pins using a **pair** **of pneumatic actuators** such that each of the pneumatic actuators lift respective opposing ends of the support substantially simultaneously and in unison. The Examiner correctly states AAPA fails to teach this limitation and relies on Lodewegen to allegedly teach the limitation (pg. 7 of paper no.

01062006). However, Lodewegen teaches a **single** pneumatic cylinder 44 for “a pair of $\frac{3}{4}$ [inch] rods or forks” (col. 6, lns. 25-32), not a **pair of pneumatic actuators** as positively recited by claims 1 and 8. A “pair of rods or forks” is not a pair of **pneumatic actuators**. Since the cited art fails to teach or suggest the positively recited limitations of claims 1 and 8, claims 1 and 8 are allowable for this additional reason.

In anticipation of a statement by the Office that it is obvious to modify the Lodewegen device to have a **pair of pneumatic actuators**, Applicant submits there is no reasonable rationale for modifying the Lodewegen device to have a **pair of pneumatic actuators**. The Examiner is respectfully reminded that the Federal Circuit Court has held: “The factual inquiry whether to combine [and modify] references must be thorough and searching.’ *Id.* **It must be based on objective evidence of record.**” *In re Lee*, 277 F.3d 1338, 1342-44, 61 USPQ 2d 1430, 1433 (Fed. Cir. 2002) (emphasis added); *referred to in* MPEP §2143.01 I. (8th ed. rev. 3, vol. 2). The Lodewegen device functions as intended with a **single** pneumatic cylinder 44, and therefore, there is absolutely no need to add another pneumatic cylinder to make a **pair** of pneumatic actuators as recited by claims 1 and 8. Adding another pneumatic cylinder to the Lodewegen device would add great expenditure and man hours to incorporate such, all without any **objective evidence of** providing any benefit to the Lodewegen device, as required by the Federal Circuit Court. There simply is no reason to do that which is not needed. Accordingly, there is no reasonable rationale to modify the Lodewegen device to have a **pair** of pneumatic actuators as recited by claims 1 and 8.

Moreover, Applicant again refers to the Federal Circuit Court’s holding: “The factual inquiry whether to combine [and modify] references must be thorough and searching.’ *Id.* **It**

must be based on objective evidence of record.” *In re Lee*, 277 F.3d 1338, 1342-44, 61 USPQ 2d 1430, 1433 (Fed. Cir. 2002) (emphasis added); *referred to in* MPEP §2143.01 I. (8th ed. rev. 3, vol. 2). The Examiner states it would be obvious to modify the AAPA invention with teachings of Lodewegen to allegedly teach the limitations of claims 1 and 8 “for the intended purpose of improving the efficiency at which the support member is displaced” (pg. 7 of paper no. 01062006), without providing the objective evidence, from the record, of where this alleged motivational rationale is suggested or taught. Accordingly, the Examiner has failed to provide the thorough and searching factual inquiry based on objective evidence of record to modify the AAPA pursuant to the Federal Circuit Court. Without the objective evidence of record, the Examiner has not met the required test for a proper obviousness rejection, and therefore, the obviousness rejections based on the combinations presented by the Examiner must fail. For these additional reasons, independent claims 1 and 8 are allowable.


Claims 2-7 depend from independent claim 1, and therefore, are allowable for at least the reasons discussed above with respect to the independent claim.

Claims 9-10 depend from independent claim 8, and therefore, are allowable for at least the reasons discussed above with respect to the independent claim.

This application is now believed to be in immediate condition for allowance, and action to that end is respectfully requested. If the Examiner’s next anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview prior to issuance of any such subsequent action.

Respectfully submitted,

Dated: 8-14-06

By: 
D. Brent Kenady
Reg. No. 40,045